

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION FOR)
PERMIT #63-32499 IN THE NAME OF) VANGROUW NON-APPEARANCE
MAYFIELD TOWNSITE LLC) PRELIMINARY ORDER
_____)**

FINDINGS OF FACT

1. On December 10, 2008, IDWR sent out notices for a prehearing conference to be held on February 24, 2009 for contested Application for Permit #63-32499. The notices were sent postage prepaid regular mail through the US Postal Service. A mailing certificate of service included Dana Hofstetter Attorney representing the VanGrouw protest.

2. On February 24, 2009, the protestant, interveners, and applicant representatives appeared at the conference set time and location. Dana Hofstetter and/or Daniel S VanGrouw did not appear. During the conference, IDWR contacted Attorney Hofstetter regarding the non-appearance. Attorney Hofstetter arrived shortly after the conference had concluded. She met with the IDWR conference officer, and stated that she was not aware of the scheduled conference. An E-mail followed on February 25, 2009.

3. On March 18, 2009, a formal letter response was received from Attorney Hofstetter. The letter stated the conference notice had been misplaced..

CONCLUSION

1. A notice of default was not issued by IDWR because Attorney Hofstetter came forward promptly to address the matter.

2. Rules of Procedure IDAPA 37.01.01 Rule 55 states in part: *the officer designated by the agency to serve rules, notices, complaints and order issued by the agency may serve these documents by regular mail or certified mail, return receipt requested.* Rule 303 also states: *Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate: " I hereby certify that I have this day of _____ served the foregoing (names) a copy"...*
The prehearing conference notice was sent properly to Attorney Hofstetter.


3. Rules of procedure IDAPA 37.01.01 Rules 512 & 514 define a prehearing conference as formal (on record) or informal (off record). The prehearing conference on February 24, 2009 was informal. IDWR would not dismiss a protest for non appearance by a protestant/ representative at an informal proceeding.

4. The VanGrouw protest filed against Application for Permit #63-32499 conforms to the criteria outlined in Idaho Code (IC) §42-203A (4) and IC§ 42-221. The protest should remain.

ORDER

It is HEREBY ORDERED the Daniel S VanGrouw protest will remain, and Attorney Hofstetter will continue to participate in the proceedings for Application for Permit #63-32499 under the name of Mayfield Townsite LLC.


Dated this 30 day of March, 2009



John Westra
Manager, Western Regional Office

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2009, I mailed a true and correct copy, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

A handwritten signature in black ink, appearing to read "Denise Buffington", is written over a horizontal line.

Denise Buffington
Administrative Assistant

PACIFIC WEST LAND LLC
ATTN JEFFREY C FEREDAY & MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701

ARK PROPERTIES. JOHN MCCALLUM
ATTN: BRUCE SMITH
MOORE SMITH BUXTON & TURCKE CHTD
950 W BANNOCK STE 520
BOISE ID 83702

MAYFIELD TOWNSITE LLC
ATTN: ROBERT A MAYNARD & ERIKA MALMEN
PERKINS COIE LLP
PO BOX 737
BOISE ID 83701

DANIEL S VAN GROUW
ATTN: DANA HOFSTETTER
608 W FRANKLIN ST
BOISE ID 83702

G3 LLC
ATTN: CRAIG HAYNES
2136 E LEWANDOWSKI LN
BOISE ID 83716

SPF WATER ENGINEERING
ATTN: SCOTT KING
300 E MALLARD DR, STE 350
BOISE ID 83706

HOFSTETTER LAW OFFICE

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Boise, Idaho 83702

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Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

March 18, 2009

COPY

RECEIVED
MAR 19 2009
WATER RESOURCES
WESTERN REGION

Via Facsimile (334-2348) and U.S. Mail

John Westra
Western Regional Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: In the Matter of Application for Permit No. 63-32499 in the Name of Mayfield
Townsite LLC

Dear Mr. Westra:

As you know, I appeared for the February 24, 2009 pre-hearing conference in the above-referenced matter about one hour late, after receiving a voice mail message from your office concerning my absence at the scheduled pre-hearing conference. Due to the misplacement of the Notice of Prehearing Conference at my office, the pre-hearing conference was not calendared and accordingly, I did not appear on time. I apologize for this error and I have taken steps to minimize the possibility of another similar calendaring error in the future. Please let me know if you have any further questions about this matter or need any additional information.

Sincerely,

HOFSTETTER LAW OFFICE, LLC



Dana L. Hofstetter

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.